

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MICHAEL ANDREW CONNER,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARIE WIREMAN,

Respondent-Appellant,

and

ROBERT CONNER,

Respondent.

UNPUBLISHED

October 27, 2000

No. 226794

Jackson Circuit Court

Family Division

LC No. 98-086310-NA

Before: Wilder, P.J., and Smolenski and Whitbeck, J.J.

PER CURIAM.

Respondent-appellant Marie Wireman appeals as of right from an order terminating her parental rights to the minor child pursuant to MCR 712A.19b(3)(g), (h), (i), (j), and (l); MSA 27.3178(598.19b)(3) (g), (h), (i), (j), and (l). We affirm.

In a termination hearing, the petitioner bears the burden of demonstrating a statutory basis for termination, by clear and convincing evidence. MCR 5.974(F)(3). The petitioner need only establish one statutory ground for termination. *In re Trejo Minors*, 462 Mich 341, 360; 612 NW2d 407 (2000). Once that statutory basis for termination is shown, the trial court shall terminate parental rights unless it finds that doing so is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(F)(3); *In re Trejo Minors*, *supra*, 462 Mich 344. This Court reviews for clear error the trial court's decision that a ground for termination has been proven by clear and convincing evidence. *Id.* at 356-357; MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445

NW2d 161 (1989). “A finding is ‘clearly erroneous’ [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.*, quoting *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

In the present case, the court terminated appellant’s parental rights under multiple statutory subsections, MCL 712A.19b(3)(g), (h), (i), (j), and (l); MSA 27.3178(598.19b)(3)(g), (h), (i), (j), and (l). Appellant argues that petitioner failed to prove a statutory ground for termination by clear and convincing evidence. To the contrary, we find that petitioner supplied the requisite evidence to support termination of appellant’s parental rights under five separate statutory subsections.

First, the trial court found that appellant, without regard to intent, had failed to provide proper care or custody for the child and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time, considering the child’s age. MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). In this proceeding, appellant testified that she has been abusing cocaine since age fourteen. She tested positive for both cocaine and marijuana when the child was born, and the child tested positive for cocaine. Although appellant has been offered numerous services to address her substance abuse problem, she has consistently failed to complete any treatment programs. In early 1999, appellant was incarcerated on cocaine possession charges. When placed in a treatment program as an alternative to prison, appellant absconded and returned to her life of drug addiction, selling prescription medication in exchange for money to buy cocaine. At the time of her arrest, appellant was found alone with the minor child, while in possession of a crack cocaine pipe. Accordingly, we believe that the trial court did not clearly err in finding that the statutory ground for termination contained in subsection 19b(3)(g) was proven by clear and convincing evidence.

Second, the trial court found that appellant was imprisoned for such a period that the child will be deprived of a normal home for a period exceeding two years, that appellant has not provided for the child’s proper care and custody, and that there is no reasonable expectation that appellant will be able to provide proper care and custody within a reasonable period of time, considering the child’s age. MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h). Appellant is currently serving a term of 1 to 4 years’ imprisonment for cocaine possession. The Department of Corrections lists her earliest release date at November 13, 2001. Although appellant believes that she will likely be paroled in December, 2000, her date of release is speculative at best. The evidence produced at trial demonstrated that appellant never provided for the child’s proper care and custody, at any point in his young life. Further, appellant is currently incarcerated for a period exceeding two years. Accordingly, we believe that the trial court did not clearly err in finding that the statutory ground for termination contained in subsection 19b(3)(h) was proven by clear and convincing evidence.

Third, the trial court found that appellant’s parental rights to the child’s three siblings were terminated due to serious and chronic neglect, and prior attempts to rehabilitate appellant have been unsuccessful. MCL 712A.19b(3)(i); MSA 27.3178(598.19b)(3)(i). Appellant admitted below that her parental rights to her three prior children were terminated in 1996. The circuit court took judicial notice of the file in that prior proceeding, and concluded that appellant’s parental rights to those siblings were terminated “due to a serious and long standing drug problem.” Appellant admitted that her substance abuse problem was an issue in the prior proceeding, and admitted that she failed to follow

through with drug treatment programs offered to her during that proceeding. Accordingly, we believe that the trial court did not clearly err in finding that the statutory ground for termination contained in subsection 19b(3)(i) was proven by clear and convincing evidence.

Fourth, the trial court found that there was a reasonable likelihood, based on the conduct or capacity of appellant, that the child would be harmed if returned to her care. MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j). The evidence produced at trial demonstrated that appellant has a long-standing substance abuse problem, including the use of both marijuana and crack cocaine. Although she denied using drugs when visiting the child, appellant used both cocaine and marijuana while pregnant, and she was caught in possession of a crack cocaine pipe while alone with the child. Appellant also freely admitted to stealing and selling prescription pills in order to pay for her cocaine habit. Finally, appellant allowed a loaded pistol to be stored in a location accessible to the child. Accordingly, we believe that the trial court did not clearly err in finding that the statutory ground for termination contained in subsection 19b(3)(j) was proven by clear and convincing evidence.

Fifth, the trial court found that appellant's parental rights to another child were terminated as a result of neglect proceedings. MCL 712A.19b(3)(l); MSA 27.3178(598.19b)(3)(l). Given our discussion of the evidence produced under subsection 19b(3)(i), it is clear that appellant's parental rights to her three prior children were terminated because of her long-standing substance abuse problem. Accordingly, we believe that the trial court did not clearly err in finding that the statutory ground for termination contained in subsection 19b(3)(l) was proven by clear and convincing evidence.

Finally, appellant argues that the trial court erroneously determined that the best interests of the child supported termination of her parental rights. Under MCL 712A.19b(5); MSA 27.3178(598.19b)(5), once a statutory ground for termination is established, the court must terminate parental rights unless there exists evidence, on the whole record, that termination is clearly not in the child's best interests. *In re Trejo Minors, supra*, 462 Mich 344. This Court reviews the trial court's decision regarding the child's best interests for clear error. *Id.* at 356-357. The trial court may consider evidence introduced by any party when determining whether termination is clearly not in a child's best interest. *Id.* at 353. Neither the petitioner nor the party opposing termination bears the burden of proving the best interests of the child, because subsection 19b(5) permits the court to determine the child's best interests from the evidence on the whole record. *Id.* at 352-353. Further, the circuit court "must state its findings and conclusions regarding any best interest evidence on the record or in writing." *Id.* at 356.

Appellant correctly notes that the trial court's statement regarding the best interests of this child was brief. However, the Court's written conclusion followed a three-page summary of the facts supporting termination, and was based on those findings of fact. Given the evidence produced below and the trial court's factual findings that supported termination under multiple statutory subsections, we cannot say that the trial court clearly erred in applying those same facts

to determine that the whole record did not demonstrate that termination was clearly not in the child's best interests.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Michael R. Smolenski

/s/ William C. Whitbeck